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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAWN SOARES, TIFFANY SOARES,)
ALISSA VARNEDOE, JAYDA)
MACCASKIE AS MOTHER AND)
NATURAL GUARDIAN FOR MINOR)
CHILDREN "J.V." AND "S.V.")
CHILDREN OF DECEDENT, AND)
SUCCESSORS OF INTEREST,)
HEIRS.)

Plaintiffs,
vs.

COUNTY OF LOS ANGELES,)
SHERIFF JIM MCDONNELL,)
CAPTAIN JACK EWELL,)
SERGEANT SEAN BURKE, DEPUTY)
ANTHONY GEISBAUER, DEPUTY)
JUAN RODRIQUEZ, DEPUTY)

CASE NO: 2:17-cv-00924-RGK-AS

Honorable R. Gary Klausner

**[PROPOSED] FINAL PRETRIAL
CONFERENCE ORDER**

Pre-Trial Conference

Date: May 14, 2018
Time: 9:00 a.m.
Crtrm: 850

Trial by Jury

Date: May 29, 2018
Time: 9:00 a.m.
Crtrm: 850

1 EDSON SALAZAR, DEPUTY)
2 DONALD MCNAMARA, DEPUTY)
3 STEVEN PRATT, DEPUTY IAN)
4 STADE, DEPUTY DANIEL WELLE,)
5 DEPUTY WHEELER, COMMANDER)
6 PATRICK MAXWELL, and DOES 1-)
7 10)
8)
9 Defendants.)
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Following pretrial proceedings, pursuant to F.R. Civ. P. 16 and L.R. 16, IT
IS ORDERED:

1. THE PARTIES

A. Plaintiffs: Dawn Soares
Tiffany Soares
Alissa Varnedoe
“J.V.” a minor by and through her guardian ad litem,
Jayda MacCaskie
“S.V.” a minor by and through her guardian ad litem,
Jayda MacCaskie

Decedent: Leroy Genaro Varnedoe aka Michael Soares

Dawn Soares is the mother of the Decedent. Tiffany Soares is the sister of the Decedent. Alissa Varnedoe is the adult daughter of the Decedent. “J.V.” and “S.V.” are the minor children of the Decedent. All plaintiffs bring wrongful death claims in their individual capacities. Alissa Varnedoe, J.V., and S.V. also assert a claim for violation of Decedent’s civil rights as his successors-in-interest.

B. Defendants: Sheriff Jim McDonnell
Captain Jack Ewell
Sergeant Sean Burke
Deputy Anthony Geisbauer
Deputy Juan Rodriguez
Deputy Edson Salazar
Deputy Donald McNamara
Deputy Steven Pratt
Deputy Ian Stade
Deputy Daniel Welle
Deputy James Wheeler

Commander Patrick Maxwell

Each of these parties has been served and has appeared. All other parties named in the pleadings and not identified in the preceding paragraph are now dismissed.

The pleadings which raise the issues are:

(a) Plaintiffs' First Amended Complaint ("FAC") (Document No. 54);

and

(b) Answer to FAC filed by Defendants (Docket No. 69).

2. FEDERAL JURISDICTION AND VENUE ARE INVOKED UPON THE FOLLOWING GROUNDS:

Federal jurisdiction is invoked under 42 U.S.C. §1983. This is a civil case which involves civil rights violations by the employees of the County of Los Angeles and its Sheriff's Department, who were acting under color of law in their individual and official capacities as employees of the Sheriff's Department. The facts requisite to federal jurisdiction are admitted.

3. TRIAL ESTIMATE

The trial is estimated to take 8-10 trial days.

4. THE TRIAL IS TO BE A JURY TRIAL

The trial is to be a jury trial, as timely requested by all parties. At least seven (7) days prior to the trial date, the parties may but need not submit brief proposed voir dire questions for the jury. Additionally, in accordance with this Court's Order, (a) at least thirty-five (35) days prior to the trial date, plaintiffs shall serve on defendants plaintiffs' proposed jury instructions and special verdict forms; (b) twenty-eight (28) days before trial, defendants shall serve on plaintiffs their objections to plaintiffs' instructions together with any additional instructions defendants intend to offer; (c) twenty-one (21) days before trial, plaintiffs shall serve on defendant plaintiffs' objections to defendants' instructions; (d) sixteen

(16) days before trial, counsel shall file with the court a Joint set of jury instructions on which there is agreement. Defendants' counsel has the burden of preparing the joint set of jury instruction; (e) at the same time, each party shall file its proposed jury instructions which are objected to by any other party, accompanied by points and authorities in support of these instructions.

5. THE FOLLOWING FACTS ARE ADMITTED AND REQUIRE NO PROOF:

(1) Defendant Sheriff Jim McDonnell was at all relevant times the Sheriff of Los Angeles County Sheriff Department.

(2) Defendant Sheriff Jim McDonnell was employed by Defendant County of Los Angeles.

(3) Defendant Sheriff Jim McDonnell was acting at all relevant times under the color of law.

(4) Defendant Captain Jack Ewell was at all relevant times a Los Angeles County Sheriff's Department Captain.

(5) Defendant Captain Jack Ewell was employed by Defendant County of Los Angeles.

(6) Defendant Captain Jack Ewell was acting at all relevant times under the color of law.

(7) Defendant Sergeant Sean Burke was at all relevant times a Los Angeles County Sheriff's Department Sergeant.

(8) Defendant Sergeant Sean Burke was employed by Defendant County of Los Angeles.

(9) Defendant Sergeant Sean Burke was acting at all relevant times under the color of law.

(10) Defendant Deputy Anthony Geisbauer was at all relevant times a Los Angeles County Sheriff's Department Deputy.

1 (11) Defendant Deputy Anthony Geisbauer was employed by Defendant
2 County of Los Angeles.

3 (12) Defendant Deputy Anthony Geisbauer was acting at all relevant
4 times under the color of law.

5 (13) Defendant Deputy Juan Rodriguez was at all relevant times a Los
6 Angeles County Sheriff's Department Deputy.

7 (14) Defendant Deputy Juan Rodriguez was employed by Defendant
8 County of Los Angeles.

9 (15) Defendant Deputy Juan Rodriguez was acting at all relevant times
10 under the color of law.

11 (16) Defendant Deputy Edson Salazar was at all relevant times a Los
12 Angeles County Sheriff's Department Deputy.

13 (17) Defendant Deputy Edson Salazar was employed by Defendant
14 County of Los Angeles.

15 (18) Defendant Deputy Edson Salazar was acting at all relevant times
16 under the color of law.

17 (19) Defendant Deputy Donald McNamara was at all relevant times a
18 Los Angeles County Sheriff's Department Deputy.

19 (20) Defendant Deputy Donald McNamara was employed by Defendant
20 County of Los Angeles.

21 (21) Defendant Deputy Donald McNamara was acting at all relevant
22 times under the color of law.

23 (22) Defendant Deputy Steven Pratt was at all relevant times a Los
24 Angeles County Sheriff's Department Deputy.

25 (23) Defendant Deputy Steven Pratt was employed by Defendant
26 County of Los Angeles.

27 (24) Defendant Deputy Steven Pratt was acting at all relevant times
28

1 under the color of law.

2 (25) Defendant Deputy Ian Stade was at all relevant times a Los
3 Angeles County Sheriff's Department Deputy.

4 (26) Defendant Deputy Ian Stade was employed by Defendant County
5 of Los Angeles.

6 (27) Defendant Deputy Ian Stade was acting at all relevant times
7 under the color of law.

8 (28) Defendant Deputy Daniel Welle was act at all relevant times a
9 Los Angeles County Sheriff's Department Deputy.

10 (29) Defendant Deputy Daniel Welle was employed by Defendant
11 County of Los Angeles.

12 (30) Defendant Deputy Daniel Welle was acting at all relevant times
13 under the color of law.

14 (31) Defendant Deputy James Wheeler was at all relevant times a Los
15 Angeles County Sheriff's Department Deputy.

16 (32) Defendant Deputy James Wheeler was employed by Defendant
17 County of Los Angeles.

18 (33) Defendant Deputy James Wheeler was acting at all relevant times
19 under the color of law.

20 (34) Defendant Commander Patrick Maxwell was at all relevant times
21 a Los Angeles county Sheriff's Department Commander.

22 (35) Defendant Commander Patrick Maxwell was employed by
23 Defendant County of Los Angeles.

24 (36) Defendant Commander Patrick Maxwell was acting at all
25 relevant times under the color of law.

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1 **6. THE FOLLOWING FACTS, THOUGH STIPULATED, SHALL BE**
2 **WITHOUT PREJUDICE TO ANY EVIDENTIARY OBJECTION:**

3 None.

4 **7. Claims and Defenses of the Parties**

5 A. *Plaintiffs:*

6 (a) Plaintiffs plan to pursue the following claims against the following
7 defendants:

8 (1) **Claim No. 1:** Plaintiffs allege Fourth Amendment violations
9 against defendant officers for the excessive use of force against
10 Decedent, depriving him of his right to be free from
11 unreasonable seizures as guaranteed by the Fourth Amendment.

12 (2) **Claim No. 2:** Plaintiffs second claim alleges violation of their
13 Fourteenth Amendment right to substantive due process right to
14 a familial relationship with Decedent.

15 (3) **Claim No. 3:** Decedent's daughters, plaintiffs Alissa
16 Varnedoe, J.V., and S.V. allege through their survival action
17 that Decedent's Fourth Amendment right to be free from
18 unreasonable seizures was violated, ultimately causing his
19 death.

20 (b) The elements required to establish Plaintiffs' claims are:

21 (1) **For Claim No. 1:**

- 22 1. That the defendants acted under color of law (stipulated
23 fact);
24 2. That the nature of the crime Decedent was accused of
25 committing was substantially disproportional to the
26 amount of force used by officers on the scene;
27 3. That the deputies on scene created the dangerous
28

- 1 situation by making it a call-out scenario for SWAT
- 2 rather than surveilling Decedent's home and waiting for
- 3 him to exit on his own volition;
- 4 4. That during the standoff, Decedent never posed an
- 5 immediate threat to the safety of the officers on scene or
- 6 others;
- 7 5. That Decedent was not actively resisting arrest or
- 8 attempting to evade arrest by flight;
- 9 6. That the amount of time the deputies on scene had to
- 10 determine the type and amount of force that reasonably
- 11 appeared necessary was more than sufficient, and with
- 12 that time, officers acted unreasonably hasty;
- 13 7. That the use of multiple highly flammable hot gas
- 14 grenades that were designed for only outdoor use was
- 15 excessive, deadly, and unreasonable;
- 16 8. That the deputies, captain, and commander on scene
- 17 failed to utilize available alternative methods to take
- 18 Decedent into custody;
- 19 9. That at the time the gas grenades were dangerously
- 20 deployed into Decedent's home, Decedent was not and
- 21 had not put any other's life at risk, including nearby
- 22 civilians and police officers;
- 23 10. That the officers failed to give warning of the imminent
- 24 use of force even though it was practical to give such a
- 25 warning;
- 26 11. That it was apparent to the officers on scene that
- 27 Decedent was emotionally disturbed because of the
- 28

1 extreme amounts of methamphetamine he had been
2 using;

3 12. That the officers on scene did not have probable cause to
4 believe that Decedent had committed a crime involving
5 the infliction or threatened infliction of serious physical
6 harm.

7 13. That the harm inflicted to Decedent was known to
8 Defendants to be caused by the use of the grenade.

9 **(2) For Claim No. 2:**

- 10 1. That the officers used excessive force;
11 2. That the officers conduct “shocks the conscience”
12 because they acted with deliberate indifference when the;
13 3. That the officers acted with a conscious and reckless
14 disregard of the consequences of their actions.

15 **(3) For Claim No. 3:**

- 16 1. That the defendants acted under color of law (stipulated
17 fact);
18 2. That the nature of the crime Decedent was accused of
19 committing was substantially disproportional to the
20 amount of force used by officers on the scene;
21 3. That the deputies on scene created the dangerous
22 situation by making it a call-out scenario and calling in
23 SWAT rather than surveilling Decedent’s home and
24 waiting for him to exit on his own volition;
25 4. That during the standoff, Decedent did not pose an
26 immediate threat to the safety of the officers on scene or
27 others;
28

- 1 5. That Decedent was not actively resisting arrest or
- 2 attempting to evade arrest by flight;
- 3 6. That the amount of time the deputies on scene had to
- 4 determine the type and amount of force that reasonably
- 5 appeared necessary was more than sufficient, and with
- 6 that time, officers acted unreasonably hasty;
- 7 7. That the use of multiple highly flammable gas grenades
- 8 that were designed for outdoor use only was excessive
- 9 and unreasonable;
- 10 8. That the officers on scene failed to utilize available
- 11 alternative methods to take Decedent into custody;
- 12 9. That at the time the gas grenades were dangerously
- 13 deployed into Decedent's home, Decedent was not and
- 14 had not put any other's life at risk, including nearby
- 15 civilians and police officers;
- 16 10. That the officers failed to give warning of the imminent
- 17 use of force even though it was practical to give such a
- 18 warning;
- 19 11. That it was apparent to the officers on scene that
- 20 Decedent was emotionally disturbed because of the
- 21 extreme amounts of methamphetamine he had been
- 22 using;
- 23 12. That the officers on scene did not have probable cause to
- 24 believe that Decedent had committed a crime involving
- 25 the infliction or threatened infliction of serious physical
- 26 harm.
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(c) In brief, the key evidence Plaintiffs rely on for each of the claims is:

(1) **For Claim No. 1:**

- Testimony of Dawn Soares
- Testimony of Tiffany Soares
- Testimony of Alissa Varnedoe
- Testimony of Jayda Maccaskie
- Testimony of J.V.
- Testimony of S.V.
- Testimony of Plaintiffs' expert Robert Fonzi
- Testimony of Plaintiffs' expert Tom Yu
- Testimony of Plaintiffs' expert Nina Scotti
- Testimony of PMK Christopher Young
- Testimony of Safariland PMK John Kapeles
- Testimony of Thomas Giandomenico of the Covina-Thomas Company
- Testimony of Dr. Jeffrey Gutstadt
- Testimony of Dr. Binh Ly, MD
- Testimony of Deputy Anthony Geisbauer
- Testimony of Deputy Daniel Welle
- Testimony of Deputy Ian Stade
- Testimony of Commander Jack Ewell
- Testimony of Sergeant Thomas Giandomenico
- Testimony of Commander Patrick Maxwell
- Testimony of Tania Owen
- Testimony of Deputy Steven Pratt
- Testimony of Sergeant Sean Burke

- Testimony of Deputy Juan Rodriguez
- Testimony of Deputy Rick Hernandez
- Testimony of Deputy Peter Lavin
- Testimony of Deputy John Montenegro
- Testimony of Deputy Joshua Corrales
- Testimony of Deputy George Creamer
- Testimony of Deputy Seth Belville
- Testimony of Detective Frank Solerno
- Testimony of Lieutenant Michael O'Shea
- Testimony of Deputy Joe Garrido
- The testimony of third party witnesses as to the actions of the Decedent and what occurred the night of the incident.
- Documentary evidence produced during discovery, including gas grenade manufacturer's warnings, photographs of the scene of the incident, and the Homicide Report generated in response to the incident.

(2) **For Claim No. 2:**

- Testimony of Dawn Soares
- Testimony of Tiffany Soares
- Testimony of Alissa Varnedoe
- Testimony of Jayda Maccaskie
- Testimony of J.V.
- Testimony of S.V.
- Testimony of Plaintiffs' expert Robert Fonzi
- Testimony of Plaintiffs' expert Tom Yu
- Testimony of Plaintiffs' expert Nina Scotti
- Testimony of PMK Christopher Young

- Testimony of Safariland PMK John Kapeles
- Testimony of Thomas Giandomenico of the Covina-Thomas Company
- Testimony of Dr. Jeffrey Gutstadt
- Testimony of Dr. Binh Ly, MD
- Testimony of Deputy Anthony Geisbauer
- Testimony of Deputy Daniel Welle
- Testimony of Deputy Ian Stade
- Testimony of Commander Jack Ewell
- Testimony of Sergeant Thomas Giandomenico
- Testimony of Commander Patrick Maxwell
- Testimony of Tania Owen
- Testimony of Deputy Steven Pratt
- Testimony of Sergeant Sean Burke
- Testimony of Deputy Juan Rodriguez
- Testimony of Deputy Rick Hernandez
- Testimony of Deputy Peter Lavin
- Testimony of Deputy John Montenegro
- Testimony of Deputy Joshua Corrales
- Testimony of Deputy George Creamer
- Testimony of Deputy Seth Belville
- Testimony of Detective Frank Solerno
- Testimony of Lieutenant Michael O'Shea
- Testimony of Deputy Joe Garrido
- The testimony of third party witnesses as to the actions of the Decedent and what occurred the night of the incident.
- Documentary evidence produced during discovery,

1 including gas grenade manufacturer's warnings,
2 photographs of the scene of the incident, and the Homicide
3 Report generated in response to the incident.

4 **(3) For Claim No. 3:**

- 5 • Testimony of Dawn Soares
- 6 • Testimony of Tiffany Soares
- 7 • Testimony of Alissa Varnedoe
- 8 • Testimony of Jayda Maccaskie
- 9 • Testimony of J.V.
- 10 • Testimony of S.V.
- 11 • Testimony of Plaintiffs' expert Robert Fonzi
- 12 • Testimony of Plaintiffs' expert Tom Yu
- 13 • Testimony of Plaintiffs' expert Nina Scotti
- 14 • Testimony of PMK Christopher Young
- 15 • Testimony of Safariland PMK John Kapeles
- 16 • Testimony of Thomas Giandomenico of the Covina-Thomas
17 Company
- 18 • Testimony of Dr. Jeffrey Gutstadt
- 19 • Testimony of Dr. Binh Ly, MD
- 20 • Testimony of Deputy Anthony Geisbauer
- 21 • Testimony of Deputy Daniel Welle
- 22 • Testimony of Deputy Ian Stade
- 23 • Testimony of Commander Jack Ewell
- 24 • Testimony of Sergeant Thomas Giandomenico
- 25 • Testimony of Commander Patrick Maxwell
- 26 • Testimony of Tania Owen
- 27 • Testimony of Deputy Steven Pratt
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- Testimony of Sergeant Sean Burke
- Testimony of Deputy Juan Rodriguez
- Testimony of Deputy Rick Hernandez
- Testimony of Deputy Peter Lavin
- Testimony of Deputy John Montenegro
- Testimony of Deputy Joshua Corrales
- Testimony of Deputy George Creamer
- Testimony of Deputy Seth Belville
- Testimony of Detective Frank Solerno
- Testimony of Lieutenant Michael O'Shea
- Testimony of Deputy Joe Garrido
- The testimony of third party witnesses as to the actions of the Decedent and what occurred the night of the incident.
- Documentary evidence produced during discovery, including gas grenade manufacturer's warnings, photographs of the scene of the incident, and the Homicide Report generated in response to the incident.

B. Defendants

(a) Defendants plan to pursue the following affirmative defenses:

- a. Defendants had probable cause to detain and arrest decedent.
- b. The use of force by Defendants was objectively reasonable under the totality of the circumstances.
- c. Defendants were not deliberately indifferent to any substantial risk of harm to decedent.
- d. Defendants' actions were taken in good faith, within the scope of their duty and without malice.
- e. Defendants' actions were not the moving force of any

violation of decedent's constitutional rights.

f. Decedent failed to mitigate or attempt to mitigate damages.

(b) The elements required to establish Defendants' affirmative defenses are:

(a) **For Claim No. 1: (Excessive Force)**

Defendants had probable cause to detain and arrest decedent.

Defendants' conduct, including the use of any force, was objectively reasonable under the totality of the circumstances.

Decedent failed to mitigate his damages or attempt to mitigate his damages, especially due to his failure to obey the commands of the Deputies to exit the residence.

(b) **For Claim No. 2: (Familial Relationship)**

Defendants had probable cause to detain and arrest decedent.

Defendants' conduct did not "shock the conscience".

Defendants were not deliberately indifferent to any substantial risk of harm to decedent.

Defendants' actions were taken in good faith, within the scope of their duty and without malice.

(c) **For Claim No. 3: (Survivor Claim)**

Defendants had probable cause to detain and arrest decedent.

Defendants' conduct, including the use of any force, was objectively reasonable under the totality of the circumstances.

Decedent failed to mitigate his damages or attempt to mitigate his damages, especially due to his failure to obey the

1 commands of the Deputies to exit the residence.

2 (c) In brief, the key evidence Defendants rely on for each
3 affirmative defense is:

4 **For Claim No. 1: (Excessive Force)**

- 5 • The testimony of Captain Jack Ewell
- 6 • The testimony of Commander Patrick Maxwell
- 7 • The testimony of Sergeant Sean Burke
- 8 • The testimony of Deputy Ian Stade
- 9 • The testimony of Deputy Anthony Geisbauer
- 10 • The testimony of Deputy Daniel Welle
- 11 • The testimony of Lt. Thomas Giandomenico
- 12 • The testimony of Deputy Juan Rodriquez
- 13 • The testimony of Deputy Edson Salazar
- 14 • The testimony of Deputy Steven Pratt
- 15 • The testimony of Deputy James Wheeler
- 16 • The testimony of Deputy Seth Belville
- 17 • The testimony of Detective Tania Owen
- 18 • The testimony of Dr. Jeffrey Gutstadt
- 19 • The testimony of Clarence Chapman
- 20 • The testimony of Chester Lee McMillion
- 21 • The testimony of Steven Carman
- 22 • The testimony of David Rich
- 23 • The testimony of Binh Ly, M.D.
- 24 • The testimony of Kris Mohandie
- 25 • The testimony of Otto Carchi
- 26 • The testimony of Thomas Giandomenico
- 27 • The testimony of Deliah Clarino
- 28

- The testimony of Amanda Riley
- The Homicide Report prepared by the Los Angeles County Sheriff's Department Homicide Detectives.

For Claim No. 2: (Familial Relationship)

- The testimony of Captain Jack Ewell
- The testimony of Commander Patrick Maxwell
- The testimony of Sergeant Sean Burke
- The testimony of Deputy Ian Stade
- The testimony of Deputy Anthony Geisbauer
- The testimony of Deputy Daniel Welle
- The testimony of Lt. Thomas Giandomenico
- The testimony of Deputy Juan Rodriquez
- The testimony of Deputy Edson Salazar
- The testimony of Deputy Steven Pratt
- The testimony of Deputy James Wheeler
- The testimony of Deputy Seth Belville
- The testimony of Detective Tania Owen
- The testimony of Dr. Jeffrey Gutstadt
- The testimony of Clarence Chapman
- The testimony of Chester Lee McMillion
- The testimony of Steven Carman
- The testimony of David Rich
- The testimony of Binh Ly, M.D.
- The testimony of Kris Mohandie
- The testimony of Otto Carchi
- The testimony of Thomas Giandomenico
- The testimony of Deliah Clarino

- The testimony of Amanda Riley
- The testimony of Dawn Soares
- The testimony of Tiffany Soares
- The testimony of Alissa Varnedoe
- The testimony of J.V.
- The testimony of S.V.
- The testimony of Jayda MacCaskie
- The Homicide Report prepared by the Los Angeles County Sheriff's Department Homicide Detectives.

For Claim No. 3: (Survivor Claim)

- The testimony of Captain Jack Ewell
- The testimony of Commander Patrick Maxwell
- The testimony of Sergeant Sean Burke
- The testimony of Deputy Ian Stade
- The testimony of Deputy Anthony Geisbauer
- The testimony of Deputy Daniel Welle
- The testimony of Lt. Thomas Giandomenico
- The testimony of Deputy Juan Rodriquez
- The testimony of Deputy Edson Salazar
- The testimony of Deputy Steven Pratt
- The testimony of Deputy James Wheeler
- The testimony of Deputy Seth Belville
- The testimony of Detective Tania Owen
- The testimony of Dr. Jeffrey Gutstadt
- The testimony of Clarence Chapman
- The testimony of Chester Lee McMillion
- The testimony of Steven Carman

- The testimony of David Rich
- The testimony of Binh Ly, M.D.
- The testimony of Kris Mohandie
- The testimony of Otto Carchi
- The testimony of Thomas Giandomenico
- The testimony of Deliah Clarino
- The testimony of Amanda Riley
- The testimony of Dawn Soares
- The testimony of Tiffany Soares
- The testimony of Alissa Varnedoe
- The testimony of J.V.
- The testimony of S.V.
- The testimony of Jayda MacCaskie
- The Homicide Report prepared by the Los Angeles County Sheriff's Department Homicide Detectives.

8. **IN VIEW OF THE ADMITTED FACTS AND THE ELEMENTS REQUIRED TO ESTABLISH THE CLAIMS AND AFFIRMATIVE DEFENSES, THE FOLLOWING ISSUES REMAIN TO BE TRIED:**

1. Whether Defendants used excessive force against Decedent.
2. Whether Defendants violated Plaintiffs' Fourteenth Amendment substantive due process right to a familial relationship with Decedent.
3. Whether the actions of Defendant Sheriff Jim McDonnell violated Plaintiffs' and Decedent's constitutional rights;
4. Whether Decedent suffered damages—including but not limited to physical injury, pain and suffering and emotion distress—as a result of Defendants' actions prior to his death.
5. Whether Plaintiffs suffered damages—including but not limited to

1 loss of love comfort and support, loss of financial support, pain and
2 suffering, and emotional distress—as a result of Defendants’ actions.

3 6. The amount of Plaintiffs’ and Decedent’s compensatory damages, if
4 any.

5 7. Whether Defendants are liable for punitive damages, and if so, the
6 amount thereof.

7 8. Whether the Defendants are entitled to qualified immunity when their
8 conduct did not violate clearly established statutory or constitutional
9 rights of which a reasonable officer would have known.

10 **9. ALL DISCOVERY IS COMPLETE**

11 **10 ALL DISCLOSURES UNDER F. R. CIV. P. 26(A)(3) HAVE BEEN**
12 **MADE**

13 The joint exhibit list of the parties has been filed under separate cover as
14 required by L.R. 16-6.1. Unless all parties agree that an exhibit shall be
15 withdrawn, all exhibits will be admitted without objection at trial, except those
16 exhibits listed below:

17 (1). Plaintiffs object to Exhibit Nos. 219, 222, 223, 224, 225, 231, 232,
18 233, 242, 249, 253, 255, 300, 303, 304, 310-321.

19 (2) Defendants object to Exhibit Nos. 17, 23, 30, 31, 32, 35, 36, 41, 49,
20 50, 53, 54, 55, 56, 57, 58-88, 89, 92, 93, 94, and 95.

21 **11. WITNESS LIST OF THE PARTIES HAVE BEEN FILED WITH THE**
22 **COURT**

23 Only the witnesses identified in the lists will be permitted to testify (other
24 than solely for impeachment).

25 John Kapeles, who is the Person Most Knowledgeable (PMK) for
26 manufacturer Safariland, resides in the state of Wyoming and therefore may be
27 unavailable to testify at trial. Thus, if the need arises, Plaintiffs will read the
28

1 deposition testimony provided by Mr. Kapeles. Plaintiffs will mark the deposition
2 in accordance with L.R. 16-2.7. Plaintiff will lodge the deposition transcript with
3 the Clerk, prior to trial, in accordance with L.R. 32-1.

4 **12. THE FOLLOWING LAW AND MOTION MATTERS AND**
5 **MOTIONS IN LIMINE, AND NO OTHERS, ARE PENDING OR**
6 **CONTEMPLATED:**

7 *A. Plaintiffs' Motions in Limine*

- 8 1. Motion in Limine No. 1 to Exclude or Limit Testimony of Defense
9 Expert Kris Mohandie and Exclude "Suicide by Cop" Theory and
10 Diagnosis of Antisocial Personality Disorder.
- 11 2. Motion in Limine No. 2 to Exclude Evidence of Decedent's Criminal
12 History, Prior Contacts with Law Enforcement, and Other Bad Acts.
- 13 3. Motion in Limine No. 3 to Exclude Evidence of the County of Los
14 Angeles' Findings that the Deputies' Use of Force Was Not Criminal,
15 Was Reasonable, Justified, and/or Was Within Policy.
- 16 4. Motion in Limine No. 4 to Exclude Evidence of Any Statements or
17 Information Derived from the Undisclosed Confidential Informants.
- 18 5. Motion in Limine No. 5 to Exclude or Limit the Testimony of Expert
19 Clarence Chapman Opining that Decedent "had No Intention of
20 Peacefully or Voluntarily Exiting the Location Without Motivation" and
21 that the Fire in the Residence was "Unintentional."
- 22 6. Motion in Limine No. 6 to Exclude Information About Decedent and
23 His Actions Obtained After the Incident Occurred, Including But Not
24 Limited to an Uncorroborated Statement That Decedent Called Informant
25 on the Night of the Incident to Apologize and Disclose That he "Wasn't
26 Going to Make it Out."
- 27
- 28

1 *B. Defendants' Motions in Limine*

- 2 1. Defendants' Motion in Limine #1: To Exclude Evidence of Prior
3 Claims, Lawsuits or Incidents of Use of Force Involving Commander
4 Patrick Maxwell.
- 5 2. Defendants' Motion in Limine #2: To Exclude Reference to Prior
6 Incidents Involving the Use of a Burnsafe Device that Are Not
7 Substantially Similar to the February 5, 2015 Incident.
- 8 3. Defendants' Motion in Limine #3: To Exclude any Reference to the
9 Burn Safe Device Used in the February 5, 2015 Incident as
10 Homemade.
- 11 4. Defendants' Motion in Limine #4: To Preclude Evidence Plaintiff
12 Failed to Produce in Response to Discovery Propounded by
13 Defendants.
- 14 5. Defendants' Motion in Limine #5: To Exclude Any Evidence and/or
15 Reference to Media Reports of Lawlessness and Use of Force by Any
16 Los Angeles County Sheriffs' Personnel.
- 17 6. Defendants' Motion in Limine #6: To Exclude the Introduction Into
18 Evidence or Reference to the Report by The Citizens' Commission On
19 Jail Violence, or the 1999 Memorandum of Understanding Between
20 the County of Los Angeles and The Department of Justice.
- 21 7. Defendants' Motion in Limine #8: To Exclude Any Reference by
22 Plaintiffs' Counsel Tristan G. Pelayes to His Background in Law
23 Enforcement.
- 24 8. Defendants' Motion in Limine #9: To Exclude the Affirmative
25 Opinion of Plaintiffs' Rebuttal Expert Nina Scotti Re "Fire Prevention
26 Plan/Activities."
27

28 ///

1 **13. BIFURCATION OF THE FOLLOWING ISSUES FOR TRIAL IS**
2 **ORDERED.**

3 Defendants propose bifurcation and a separate trial as the amount of punitive
4 damages, if any, if liability is found as to any of the individual defendants.
5 Plaintiffs contend any bifurcation should be simply liability in the first phase and
6 damages including punitive damages in the second phase.

7 **14. THE FOREGOING ADMISSIONS HAVING BEEN MADE BY THE**
8 **PARTIES, AND THE PARTIES HAVING SPECIFIED THE**
9 **FOREGOING ISSUES REMAINING TO BE LITIGATED, THIS**
10 **FINAL PRETRIAL CONFERENCE ORDER SHALL SUPERCEDE**
11 **THE PLEADINGS AND GOVERN THE COURSE OF THE TRIAL**
12 **OF THIS CASE, UNLESS MODIFIED TO PREVENT MANIFEST**
13 **INJUSTICE**

14
15 Dated: May_____, 2018

16 _____
17 UNITED STATES DISTRICT JUDGE

18 **Approved as to form and content.**

19
20 /s/ Jacob P. Menicucci
21 TRISTAN G. PELAYES, Esq.
22 JACOB P. MENICUCCI, Esq.
23 WAGNER & PELAYES, LLP
24 *Attorney for Plaintiffs*

25 **At close of business on the date of filing, Defendants' counsel had yet to**
26 **approve this proposed order.**

27 DOUGLAS L. DAY
28 HAROLD G. BECKS & ASSOCIATES
Attorney for Defendants

